

[Advisory Opinion 1995-20]

December 13, 1995

[Name1 withheld]

Re: Request for Advisory Opinion

Dear [Name1 withheld]:

You have requested an advisory opinion from the Ethics Commission regarding your service on the Board of Directors of Montgomery Community Television (MCT) following your employment with Montgomery County. Your inquiry involves whether these activities are affected in any way by the provisions of the Ethics Law applicable to former employees.

The information you have provided is as follows. You have described MCT as a non-profit corporation that facilitates production of various community programs, including public access, daily news and public affairs programs. You also explained that approximately 92% of the revenue for operation of MCT derives from financial support provided by the County. Members of the Board of Directors of MCT are compensated and file financial disclosure statements with the Ethics Commission. You have been a Board member since March 1995 and have helped represent MCT in the annual budget process before the County Council, participated in MCT's negotiations with County staff on the renewal of service contracts, and met with County staff concerning MCT's total budget and expenditures.

In comparison, your employment with Montgomery County involved work in the Office of Management and Budget. In 1980, you had responsibility for cable television franchising, and through 1985, you participated in recommending that an entity like MCT be created to handle local cable matters with some separation from the County. You indicated that you did not have the authority to decide on the establishment of MCT. In 1985, you were assigned to a support role involving the lawsuit against the cable franchise for failure to comply with its contract, but you do not recall any particular responsibilities involving MCT. In 1987, you supervised capital and operating budgets for several agencies, including grants and contracts for MCT. During the period between 1987 and 1991, you had responsibility for explaining the County Executive's recommended budget for cable television activities, but it was a very small part of your workload. You also indicate that you had no authority to make decisions regarding the cable issues, although you had the opportunity to make recommendations regarding the budget for cable activities. After your retirement in 1991, you worked for the County on several special projects, but none of them involved cable issues. These contracts ended in August 1994.

As you know, the Ethics Law provides specific limitations on the activities of former public employees:

- (a) A former public employee must not accept employment of assist any party, other than a County agency, in a case, contract, or other specific matter for 10 years after the last date the employee significantly participated in the matter as a public employee.
- (b) For one year after the effective date of termination from County employment, a former employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:
 - (1) significantly participated in regulating the person or business; or
 - (2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).
- (c) Significant participation means direct administrative or operating authority to approve, disapprove, or otherwise decide government action with respect to a specific matter, whether the authority is intermediate or final, exercisable alone or with others, and exercised personally or through subordinates. It ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

§19A-13 of the Montgomery County Code 1994, as amended.

At this juncture, the one-year restriction has expired, leaving the issue of whether the prohibitions set forth in the 10-year provision apply to the type of work you handled for the County. Based upon your representation that it has been more than 10 years since your work on cable issues and with MCT involved any decision-making responsibility, either interim or final, the Ethics Commission finds that you may participate as a member of the MCT board of directors. In the event that you should recall further details of the work performed by you involving cable and MCT issues during the past 10 years, and if that information suggests that you significantly participated in such a matter, you would need to return to this Commission to request a waiver, or withdraw from participating in the conflicting activity with MCT until the 10 years has expired.

If you have any questions concerning this decision, please do not hesitate to contact the Commission.

Sincerely,
[signed]
Jay L. Cohen, Chair
Montgomery County Ethics
Commission

cc: Barbara McNally, Executive Secretary
Montgomery County Ethics Commission